IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 01.08.2024
Date of Decision : 02.09.2024

CWP No. 19667 of 2021 (O&M)

Dinesh Singla …Petitioner

Versus

Assistant Commissioner of Income Tax and another …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Ms. Radhika Suri, Senior Advocate assisted by
Ms. Parnika Singla, Advocate, and
Mr. Abhinav Narang, Advocate, for the petitioner.

Mr. Saurabh Kapoor, Senior Standing Counsel
for the respondents.

SANJEEV PRAKASH SHARMA, J.

1. The writ petition was originally filed by the petitioner seeking quashing of notice dated 20.03.2020 issued under Section 148 of the Income Tax Act, 1961 (hereinafter to be referred as "the Act"), draft assessment order under Section 144 read with Section 147 of the Act dated 08.09.2021 and the order dated 22.09.2021 whereby the objections filed by the assessee were rejected.

2. The writ petition came up for hearing on 29.09.2021 when the respondents' counsel stated that final assessment order has been passed whereafter this Court allowed the petitioner to amend his writ petition and also challenge the final assessment order. However, when the case was taken up in the Court, since on that day the statement was found to be false as the final order of assessment had not been passed, an affidavit has also been

filed seeking apology by the Revenue. Be that as it may, we have heard the case finally now.

3. Brief facts which required to be noticed for adjudication of this case are as under:-

The petitioner had purchased 92 kanals 2 marlas of agricultural land from three brothers, namely, Manjit Singh, Karnail Singh and Jarnail Singh on 14.05.2012. He further transferred the same to DSS Mega City projects company on 12.06.2012. As the land was agricultural land, it was not eligible to tax as it was not a capital asset, therefore, no income was taxable either in the hands of the seller or with the petitioner. The fact that the land was agricultural was verified by the ITO Intelligence, Karnal in its verification report dated 30.03.2015, which was forwarded to the Director of Income Tax, Intelligence and Criminal Investigation. The petitioner's assessment proceedings were completed and finalized for the year 2013-14 under Section 143 (3) of the Act on March, 2016 and no additions were made on account of any undisclosed income of capital gain. The petitioner was served with a notice dated 20.03.2020 under Section 148 of the Act wherein it was stated that there had been reasons to believe that the income chargeable for A.Y. 2013-14 had escaped assessment within the meaning of Section 147 of the Act. The order was passed under Section 144 read with Section 147 of the Act giving out the reasons of the sale of the land by the petitioner as power of attorney holder.

The land was sold by Manjit Singh to petitioner- Dinesh Singla allegedly by a registered power of attorney and the other two brothers also sold their land through him. On the basis of said reasons, it was stated that the income to the extent of Rs. 19,34,10,000/- had escaped assessment. It was stated that "the source and genuineness of investment made as well as short term

capital gain received by the assesee remained unexplained. The assessee failed to submit the supporting evidence as to whether this investment is from disclosed sources of income" and accordingly draft assessment order was prepared rounding off the total income of the petitioner as Rs. 24,69,09,300/- by adding the short term capital gain of Rs. 15,58,35,000/- and Rs.3,75,75,000/- as unexplained investment.

The petitioner submitted his objections and stated that he had already submitted his complete bank statements with narrations and details of property sold and purchased during the relevant financial year. It was stated that he was engaged in the business of sale and purchase of property and submitted that merely because of change of opinion fresh notice could not have been issued. It was also stated that the amount was part of the financial statement which was part of the A.O's record and there was no fresh tangible material. The petitioner thereafter preferred the writ petition assailing the said proceedings. It has been submitted that the land did not fall within the municipal limits of Panchkula and was 15 kms far from Panchkula and 20 kms far from municipal limits of Naraingarh, therefore, the agricultural land was not a capital asset within the meaning of Section 2(14)(iii)(b) of the Act and no capital gain would arise on the sale of the agricultural land.

4. Learned counsel for the petitioner has further challenged the final assessment order, which was allowed to be challenged by this Court by amending the writ petition. It was submitted that there was no reason to believe to initiate proceedings under Section 148 of the Act and there was no document which had come on record as all the bank statements and material was already filed at the time of final assessment done under Section 143 (3) of the Act.

5. It was further submitted that the additions proposed in the draft assessment order dated 08.09.2021 related to capital gains and unexplained investment as the source of the same was doubted. However, after furnishing of the reply, the respondents proceeded to pass the order dated 29.09.2021 wherein the assessing officer changed the stand completely and contrary to the reasons recorded earlier and instead of treating the transfer of land under head capital gains, treated the entire consideration received as an adventure in the nature of trade. It has been argued that neither in the reasons recorded nor in the final order of assessment any material was referred indicating the purchase and sale of land as a commercial venture by the assessee. It is submitted that the final assessment order passed by the assessing officer was not based on the draft assessment order and the reasons to believe mentioned therein for initiating proceedings under Section 148 of the Act.

6. Learned counsel for the petitioner has relied on judgment of Supreme Court in ***The Income-Tax Officer, I Ward, District VI, Calcutta and others vs Lakhmani Mewal Das*** (1976) 3 SCC 757, Delhi High Court in ***Emirates Shipping Line, FZE vs Assistant Director of Income-Tax*** (2012) 349 ITR 493 and ***Vanita Sanjeev Anand vs Income Tax Officer*** (2020) 422 ITR 1, to submit that the reasons to believe have to be based on any new material which may be unearthed after the final assessment has been made and cannot be on the basis of the documents which have already been considered and examined earlier.

7. Learned counsel for the petitioner has also relied on a recent judgment of Delhi High Court in ***Banyan Real Estate Fund Mauritius vs Assistant Commissioner of Income Tax Circle International Tax 112 and another*** 2024 SCC OnLine Del 5312 to submit that the assessing officer could not have passed the order of assessment on additional reasons or those

which may be supplied subsequently. It is her submission that the assessement order issued by the respondents is based on reasons for which no show cause notice was given.

8. Written statement on behalf of the respondents through Assistant Commissioner of Income Tax, Circle, Panchkula has been filed. It is objected that the petition would not lie as the final assessment order has been passed against which appeal before the Commissioner of Income Tax (Appeals) lies. The respondents have further stated that the order impugned dated 29.09.2021 was uploaded on the portal at 04.39 p.m. and demand notice issued at 04.24 p.m. wherein it is stated that the time of generation of assessment order was 15:37:03 and notice of demand is 15:38:06. The same are auto selected for generating in one go only. As a defined sequence, the assessment order generates first and immediately in succession, the demand notice and computation sheet is generated. No fault can be found with the procedure.

9. Learned counsel for the revenue further submits that at this stage the petitioner cannot be allowed to raise the grievance that he was not given any opportunity and have tabulated the dates from 20.03.2020 when the initial notice under Section 148 of the Act was issued to the date of passing of the order dated 29.09.2021 to point out that several opportunities were given to the petitioner to submit his reply and put up his case but he did not avail the same at his own peril for which the action of the revenue cannot be said to be violative of principles of natural justice. It is further stated that the petitioner sold the land measuring 92 kanals 2 marlas to M/s DSS Mega City Projects Private Limited on 12.06.2012 which he had purchased the land from Manjit Singh, Jarnail Singh and Karnail Singh on 14.05.2012. But he failed to substantiate the source of investment and failed to fully disclose

all material facts necessary for assessment and, therefore, the assessing officer found the belief that the income chargeable to tax escaped assessment and re-opened the assessment under Section 147 of the Act after seeking necessary satisfaction of the Principal Commissioner of Income Tax, Panchkula.

10. It was also stated that the order passed by the assessing officer was appealable, and therefore, the writ petition should not be entertained. The reliance placed on verification report of the ITO Intelligence dated 30.03.2015 was misconceived. As the petitioner was engaged in business of trading of land, the amount was rightly added and taxed as business income and the benefit under Section 10(37) and Section 54B of the Act was not available to the petitioner. It is stated that the petitioner though objected to the draft assessment order but did not provide any documentary evidence to substantiate his claim, and therefore, the objection was rejected. It is stated that the assessee has worked as an agent/ middle man and the earning was, therefore, to be treated as business income.

11. Learned counsel for the revenue has relied on the judgment of Supreme Court in ***Raymond Woolen Mills Limited vs Income Tax Officer and others*** (1999) 236 ITR 34, wherein it was held as under:-

> "*In determining whether commencement of reassessment proceedings under section 147 is valid, the court has only to see whether there is prima facie some material on the basis of which revenue could reopen the case, the sufficiency or correctness of the material is not a thing to be considered at the stage of notice."*

12. Learned counsel for the revenue also relied on judgment of Supreme Court in ***Commissioner of Income Tax and others vs Chhabil Dass Agarwal*** (2013) 357 ITR 357 in support of his submission that the

High Court under Article 226 of the Constitution ought not to entertain the petition when remedy of appeal lies to the CIT (Appeals) under the statute.

13. We have carefully considered the submissions and the judgments cited at bar as well as the law as exists today with regard to the issues which have been raised hereinabove.

14. Before we go into the merits of the case, it would be apposite to quote Section 2(14)(iii)(a) and (b) of the Act, which is reproduced as under:-

Section 2(14)(iii)(a) and (b) of the Income Tax Act, 1961-

Definitions.

2. In this Act, unless the context otherwise requires.-

xxx xxx xxx

(14) "capital asset" means—

xxx xxx xxx

(iii) agricultural land in India, not being land situate—

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(b) in any area within the distance, measured aerially,—

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or

(III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;"

15. The first question which is required to be examined is with regard to the alternative remedy. It is true that in the ordinary course, this Court should refrain from entertaining a writ petition where there is a statutory alternative remedy of appeal provided.

16. In ***Calcutta Discount Company Limited vs Income Tax Officer, Companies District I, Calcutta and another*** 1961 (41) ITR 191, the Larger Bench of the Supreme Court by 3:2 ratio held that a writ petition against reassessment and reopening would be maintainable even if there is a provision available for filing an appeal. The said view expressed in ***Calcutta Discount Company*** (supra) was sought to be distinguished by the Supreme Court in ***Commissioner of Income Tax and others vs Chhabil Dass Agarwal*** (2013) 357 ITR 357. However, we find that the Supreme court reiterated the law as laid down in ***Calcutta Discount Company*** (supra) and ***Jeans Knit Private Limited vs Deputy Commissioner of Income Tax Bangalore and others*** (2018) 12 SCC 36.

17. We are conscious that this Court in **CWP No. 4583 of 2024** – ***Mahesh Chander Sharma vs National Faceless Assessment Centre and others*** decided on 28.02.2024 had dismissed the writ petition on the ground that alternative remedy exists. In the said case we relied on judgments passed by the Supreme Court in ***The State of Maharashtra and others vs***

Greatship (India) Limited 2022 (13) Scale 770 and ***The State of Madhya Pradesh and another vs M/s Commercial Engineers and Body Building Company Limited*** 2022 (14) Scale 920. However, we find that the Supreme Court Larger Bench in ***Calcutta Discount Company*** (supra) and a subsequent judgment in ***Red Chilli International Sales vs Income Tax Officer*** 2023 (452) ITR 222, the Supreme Court after having considered took a different view. While the case of ***Mahesh Chander Sharma*** (supra) was at the initial stage, whereas in the present case the pleadings are complete and the case is pending since long before this Court, therefore, the discretion is exercised in favour of the assessee and the case is heard on merits. There is no bar to hear a writ petition in relation to challenge to proceedings initiated under Section 148 of the Act.

18. In ***Red Chilli International Sales*** (supra), the Supreme Court has held as under:-

> *"We are with the petitioner that the impugned judgment rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this Court on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice under Section 148 of the Income Tax Act, 1961 is satisfied. The provisions of reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in depth consideration keeping in view the earlier case law. Accordingly, we set aside the observations made by the High Court in the impugned judgment observing that the writ petition would not be maintainable in view of the alternative remedy, clarify that this issue would be examined in depth by the High Court if and when it arise for consideration. We do deem it open to examine this issue in the present case after having examined the notice under Section 148A (b)*

including the annexure thereto, the reply filed by the petitioner and the order under Section 148 (d) of the Income Tax Act 1961."

19. The petitioner in the present petition challenges the proceedings initiated against him by reopening the final assessment invoking powers under sections 147 and 148 of the Act. The question would arise whether this court should entertain the writ petition. Reassessment and reopening of assessment are two issues which are different from regular assessment conducted under Section 143 of the Act. Regular appeal lies against regular assessment before the CIT (Appeals). It is true that an appeal would lie against the final order passed under Section 147 of the Act. However, the Supreme Court has been considering and examining that the case of reassessment and reopening is different from regular assessment and has expressly time and again entertained writ petitions under Article 226 of the Constitution of India wherein the challenge is made to notice under Section 148A or 148B of the Act or thereafter for reassessment.

20. In view of above, we need not further delve into the question of alternative remedy of appeal and examine the case on merits.

21. In the present case, we find that the petitioner had initially challenged the notice issued for re-opening of assessment but before the case could be taken up for arguments, the respondents stated before the Court that the final order of assessment has been passed. The said statement was found to be incorrect. Thereafter assessment order was passed in the evening and uploaded on the portal on 29.09.2021.

Upon finding that the Court was wrongly informed, the High Court allowed the petitioner to challenge the said assessment order in the present writ petition.

22. We find that the assessment proceedings under Section 143(3) of the Act for the assessment year 2013-14 were concluded in March, 2016. With regard to the agricultural income, the petitioner had placed all information in his books of accounts and the ITO, Karnal had submitted his verification report dated 13.03.2015 with regard to the purchase and sale of the agricultural land. The same was then forwarded to the Director of Income Tax on 30.03.2015 itself. Thus, when the final assessment proceedings were completed in March, 2016, details relating to the agricultural land and verification report were available on record. No additions were made on account of purchase and sale of the land and no undisclosed income or capital gain was added and the returns were finally accepted.

23. The notice under Section 148 of the Act was issued to the petitioner on 20.03.2020 and the subsequent order under Section 144 read with Section 147 of the Act for the assessment year 2013-14 reflects that the assessing officer has made additions of Rs. 19,34,10,000/ and held that the assessee has failed to furnish the facts regarding the source of investment as well as any other income relating to it and the income to the extent of Rs. 19,34,10,000/- has escaped assessment in the case of assessment year 2013-14. The order further treats the amount as a short term capital gain for sum of Rs.15,58,35,000/- and unexplained investment amounting to Rs. 3,75,75,000/-. However, the final assessment order under Section 143(3) read with Section 147 of the Act holds the entire income of Rs. 19,34,10,000/- as adventure in the nature of business.

24. As per the written submissions and arguments raised before the Court the petitioner has made two fold arguments:-

Firstly, there was no reason to believe that there is a case of escape assessment nor there was any new material available with the ITO to reach to a conclusion that the earlier assessment required to be re-assessed; and

Secondly, that while notice was issued to the petitioner on 20.03.2020 under Section 148 of the Act alleging that the agricultural land had been purchased without showing the source of investment, and therefore, the income to the extent of Rs.19,34,10,000/- had escaped assessment; an amount of Rs. 15,58,35,000/- was liable to be treated as a short term capital gain; and Rs. 3,75,75,000/- was to be treated as unexplained source of investment; at the time of final assessment done under Section 147 read with Section 143(3) of the Act, the respondents have held the amount of Rs.19,34,10,000/- as unexplained income under the heading of "adventure in the nature of the business".

It is his submission that the notice under Section 148 of the Act and the final order passed, are totally on different presumptions and the orders of reassessment, therefore, are vitiated.

25. On the other hand, learned counsel for the respondents has submitted that at the time of reassessment, the assessing officer cannot be said to only limit himself to the contents of the show cause notice issued for reassessment. The entire reassessment can be done and the scope is large for him. He will look into the different aspects which are brought to his notice at the time of passing of order of reassessment under Section 143 (3) read with Section 147 of the Act. The tentative view taken at the time of initial

stage of draft assessment under Section 144 of the Act cannot limit his powers. It is his further submission that while passing the order dated 29.09.2021, the A.O. has noticed and recorded the fact that the land was agricultural land, however, it proceeded to hold that the assessee has not conducted any agricultural activities on the said land and had not produced any evidence in support of his any agricultural activity, he could not claim any income chargeable under the capital gain in terms of Section 10(37) and Section 54 of the Act. Thereafter, the A.O. has proceeded to hold the petitioner, who had been given power of attorney by the three owners of the land, namely, Manjit Singh, Jarinal Singh and Karnail Singh that the land was actually purchased from them and the petitioner was merely a mediator and he had earned income as nature of business and the same would, therefore, fall within the meaning of undisclosed income from business. He, therefore, has proceeded to examine the case in terms of Section 50C of the Act as inserted by the Finance Act, 2002 with effect from 01.04.2003 relating to transfer by an assessee of capital asset being land or building or both.

The A.O. has also proceeded to hold adventure in nature of business as the total income under the said heading under Section 56(2)(vii) and Section 50C of the Act.

26. Learned counsel for the respondents relies on judgment of Supreme Court in ***Phool Chand Bajrang Lal vs ITO*** (1993) 4 SCC 77 as well as various judgments cited therein.

27. We have carefully considered the submissions as mentioned above and the facts which have been placed on record.

28. The assessment year is 2013-14. In relation to assessment year 2013-14, we find that the final assessment orders were passed in March, 2016 by the A.O. Before he passed the said order, he had got conducted the verification relating to the transactions done by the assessee of the agricultural land for which he invested Rs. 3,75,75,000/- and later on sold the same to the company M/s DSS Mega City Projects. The land was situated beyond the municipal limits. The ITO (Intelligence), Karnal submitted his verification report to the said effect on 30.03.2015. At the time of final assessment done in March, 2016, the A.O. did not include the said income as part of the business income nor he included it as agricultural income which falls beyond the municipal limits. Thus, it would not come within the ambit of capital asset in terms of Section 2(14)(iii)(a) and (b) of the Act (supra), and would, therefore not liable to capital gain within the meaning of Income Tax Act. We are not satisfied with the submission of the Revenue that they have no information about the said transaction at the time of their first final assessment conducted in March, 2016. It appears that it is a case of change of opinion which cannot be allowed to be a reason for reopening of the case of reassessment.

29. In ***CIT vs Kelvinator of India Limited*** (2010) 2 SCC 723, a three Judges Bench of the Apex Court held as under:-

> *7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted d hereinabove. Under the Direct Tax Laws*

(Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer."

30. We respectfully follow and hold the action to be arbitrary exercise of power by the assessing officer.

No document has been produced by the respondents to show that they had any new information or documentary evidence for reopening of the case while the power is available with them. The same has to be exercised carefully and sanctity of assessments already done should be maintained. Merely because a new assessing officer may not be happy with the manner in which assessment was done earlier, cannot be a reason to review assessment. The power available, as noticed above, is of reassessment and not of review of earlier assessment.

31. We also noticed that the petitioner had challenged the order and notice dated 20.03.2020 as well as show cause notice dated 23.09.2021 along with the draft assessment order before this Court. When the case came up before the Court, it was informed that the Revenue has passed the final assessment order which actually had not been passed. By that time when the case was taken up, the apology was accepted by this Court of giving a wrong statement in the Court, however, the petitioner was allowed to challenge the final assessment order dated 29.09.2021.

32. From the perusal of the order passed on 29.09.2021, we find that the assessing officer has now completely changed his stand from what

he had taken while issuing the draft assessment order. There is no show cause notice issued to the petitioner alleging that the income of Rs.19,34,100,00/- was acquired as 'adventure in the nature of business'. From the show cause notice, we find that the same was categorized as escape in assessment on account of treating it as a short term capital gain for a sum of Rs.15,58,35,000/- and unexplained source of investment Rs. 3,75,75,000/-. Such change of reasons for reassessment and treating the income to be under the heading of 'adventure in the nature of business', is clearly based on surmises of the assessing officer.

33. We have extensively quoted the submissions of the counsel for the respondents, who has proceeded to submit that there was no evidence produced in support of any agricultural activity and **would now**, therefore, claim under the capital gain under Section 10(37) of Section 54 of the Act. But the assessee, as we find, had not claimed it as a capital gain, but has at all times asserted the same to be falling beyond the municipal limits and, therefore, beyond the provisions of Section 2(14)(iii) of the Act. His contention has been supported by the report of the ITO (Intelligence). The A.O. does not refer either to the report of the ITO (Intelligence) nor to the submissions of the assessee. We, thus, find it a case of colourable exercise of power. When an authority is empowered to exercise and pass orders in terms of the Act, it has to remain within the four corners of the manner in which the said power is required to be exercised. Once the basis for re-opening of the case under Section 147 of the Act is of non-disclosure of income under the capital gain and non-disclosure of sources of investment, the A.O. had no authority available in law to pass order holding that income had escaped assessment, which was following as 'adventure in the nature of business'.

34. In ***Banyan Real Estate Fund Mauritius*** (supra), Delhi High Court, the assessee was assessed of income having escaped assessment, however, so far as the show cause notice is concerned, the same was issued on the premise that the assessee had not filed his income tax return for the year 2016-17. Later on, while passing the order it proceeded to hold that certain income has escaped assessment for the year 2014-15 thereto, the basis for issuing show cause notice was different from that of the final assessment order and the same was accordingly quashed.

35. We find that the record was available at the time when the assessment proceedings were completed in March, 2016 with the A.O. and the report of the ITO was obtained with regard to the nature of the land but no additions were made at that level.

36. In the case of ***State of Uttar Pradesh and others vs Aryaverth Chawal Udyog and others*** (2015) 17 SCC 324, a three Judges Bench of the Supreme Court examined the issue and difference between the "change of opinion" and "reasons to believe" while considering the provisions of the Central Sales Tax Act, 1956 and held as under:-

> "19. *Under Section 21(1) of the Act, the reassessment proceedings can only be initiated if the assessing authority has "reason to believe" that there is a case of escaped assessment and not otherwise. It is now trite law that whenever a statute provides for "reason to believe", either the reasons should appear on the face of the notice or they must be available on the material which have been placed before him."*

37. We find that the Income Tax Officer or the Assessing Officer may re-open any assessment already done by him if he finds that there has been any relevant material which is disclosed subsequently relating to the

said year or assessment and of such a nature which would reflect that such non-disclosure has resulted in an under assessment, he can issue notice under Section 148 of the Act and proceed accordingly. However, the ITO cannot be allowed to merely reopen the assessments already finalized based on his opinion that the earlier assessment was wrongful or that he has a reason to suspect that the assessment was done wrongfully. Re-assessment, therefore, has to be based on cogent material available before it, which was not available at that relevant time. The material on which the assessing officer based its opinion, therefore, cannot be irrelevant, irrational or vague. Merely on account of there being an error found based on a personal opinion of the ITO in relation to the earlier assessment, cannot be a reason to believe for initiating reassessment (ref. ***Delhi Cloth and General Mills Co. Ltd. vs State of Rajasthan*** (1980) 4 SCC 71) nor can the reason to believe for re-opening of assessment be based on an opinion that from the same perusal of some material a case of escaped assessment exists (ref. ***Binani Industries Limited vs CCT*** (2007) 15 SCC 435.

38. On merits of the case, we also find that the petitioner had purchased agricultural land from three agriculturists, namely, Manjeet Singh, Karnail Singh and Jarnail Singh for a sum of Rs. 3,75,75,000/-. He had disclosed in his earlier return of the amount having been obtained from release of FDRs. Further selling of the agricultural land to M/s DSS Megacity Projects Private Limited would not even come within the ambit of capital asset and no capital gain was liable to be taxed. It is an admitted position that the land was agricultural and beyond the municipal limits, and therefore, would not come within the ambit of Section 2 (14)(iii) (a) of the Act which required conducting of agricultural activity and would be agricultural land within the ambit of Section 2(14)(iii)(b) of the Act.

39. In the present case, we are satisfied that there is no case of escaped income also as the said aspect stood already noticed vide final assessment order passed after conducting an enquiry by the A.O. at the relevant time based on the report of the ITO (Intelligence), Karnal.

40. Thus, we are satisfied that the assessment proceedings as undertaken in 2016 did not warrant any interference or warrant any re-opening for fresh assessment. The entire proceedings initiated vide notice dated 20.03.2020 are contrary to law and are found to be illegal. Accordingly, the same shall not be sustainable in the eyes of law. The writ petition is accordingly allowed. The notice dated 20.03.2020, orders dated 22.09.2021, dated 24.09.2021, dated 29.09.2021 and demand notice dated 29.09.2021 are quashed and set aside.

41. All pending applications shall stand disposed of.

42. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

02.09.2024 **(SANJAY VASHISHT)**
vs **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No